MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

ROGER BERLINER
COUNCILMEMBER
DISTRICT 1

Good day to you all and Happy Earth Day.

I can not think of a better way to honor Earth Day than by taxing the single biggest threat to our earth – the burning of coal in power plants.

In Montgomery County, the Mirant coal fired power plant is by far and away the single largest emitter of greenhouse gases. It's CO_2 emissions alone represent approximately 25% of the total amount of greenhouse gas emissions in the County.

At the same time, our County is struggling to make ends meet, and we need new sources of revenues.

My proposed carbon tax is a responsible approach to addressing both our environmental and fiscal imperatives. It will generate between $10 and $15 million a year in new revenues and it will incentivize Mirant to reduce its emissions. These dollars will provide just a portion of the resources necessary to pay for the carbon reducing programs our County and our citizens support. It is only right that Mirant should pay its fair share of those costs.

And unlike every other tax we are considering, this tax will not be felt by Montgomery County residents. Why? Because our power is bought on a competitive basis, and if Mirant's power is not priced competitively, it will not be bought. Plain and simple.

I am sure that Mirant will fight this tax. They have fought their own shareholders who have argued that Mirant should be doing more to reduce their emissions. But I did not proceed with this proposal without first having our lawyers review it. They concluded, as have I, that we have the legal authority to impose this tax.

While all of us here would prefer for there to be strong regional or federal standards, the truth is we don't today. And it is also true that local governments often take the lead on this issues, and as result of those initiatives, there is a greater push for federal legislation. That would be a good outcome. But until then, we have the authority and we must use that authority on behalf of our taxpayers and the health and wellbeing of our residents.

I am pleased that within a span of hours, two of my colleagues immediately asked to join as co-sponsors. Councilmember Leventhal, who himself has been a strong champion for the environment for many years, and Councilmember Elrich.

Let me ask them if they would like to say a few words now before turning to two of the leading environmental advocates in our community.

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A CARBON TAX FOR MONTGOMERY COUNTY

SPONSORED BY COUNCILMEMBER ROGER BERLINER
CO-SPONSORED BY COUNCILMEMBERS ELRICH AND LEVENTHAL

This legislation will establish an excise tax on major emitters of carbon dioxide that do business in Montgomery County. The County has been working diligently to reduce its green house gas inventories and shrink its carbon footprint. It is time for those who contribute to this pollution to pay their fair share.

- EPA and the State of Maryland have determined that carbon dioxide emissions pose an unacceptable risk to public health and our environment.
- Montgomery County is committed to reducing green house gas emissions by 80% by 2050.
- Carbon Dioxide is a greenhouse gas.
- It is appropriate, fair, and good public policy for those contributing to the County's greenhouse gas emissions inventory to also contribute to help finance its reduction programs, including the Home Energy Loan Program, Clean Energy Rewards, and transit.
- This proposal calls for a tax on any carbon emitter who pollutes over one million tons of carbon dioxide in a calendar year.
- The Mirant power plant emits over 3 million tons of carbon dioxide a year at its Dickerson, Maryland location, by far the largest single source of greenhouse gas emissions in the County.
- At $5 per ton this tax will generate more than $15 million a year for the County and create an additional economic incentive for Mirant and any others to reduce emissions.
- A $5 per ton tax on Mirant will have **NO DISCERNABLE** impact on PEPCO ratepayers according to Pepco officials who have analyzed the proposed tax. PEPCO buys its power in an auction; if Mirant's power is not competitive, it will not be purchased; and Mirant does not have enough "market power" to raise the price of power unilaterally.
- At the end of 2009, Mirant had approximately $2 billion in cash and power plants throughout the mid-Atlantic & Northeast, and in California. In its 10-K filing with the SEC, Mirant observed that "[f]uture *local*, state and federal regulation of greenhouse gases is likely to create substantial environmental costs for us in the form of *taxes* or purchases of emissions allowances and/or new equipment."
- A $5 per ton tax complements the existing Regional Greenhouse Gas Initiative (RGGI), a regional cap-and-trade program.
- According to the state's leading experts, a $5 tax is equivalent to the estimated value of allowances under RGGI if Mirant's allocation were reduced by 10% from the current, steady-state levels permitted through 2014.
- The County has the legal authority to impose an excise tax on carbon.
- In the absence of a strong national program, local governments must continue to lead.
- If adopted, Montgomery County will be the first county in the country to impose a carbon tax on major emitters.

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Expedited Bill No. 29-10
Concerning: Taxes- Excise Tax – Carbon Dioxide Emissions
Revised: 4-8-10 Draft No. 4
Introduced: April 27, 2010
Expires: October 27, 2011
Enacted: ____
Executive: ____
Effective: ____
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Berliner

AN EXPEDITED ACT to:

(1) establish a reliable funding source for greenhouse gas reduction programs in the form of an excise tax on major emitters of carbon dioxide;
(2) set the rate of the tax and authorize the County Council to increase or decrease the rate each year by resolution;
(3) define certain terms, and authorize the County Executive to issue certain regulations;
(4) provide for collection of the tax and payment of interest and penalties, set the effective date of the tax, and apply certain provisions of law to this tax;
(5) require part of the revenue from this tax to be used for certain greenhouse gas reduction programs; and
(6) generally amend the County laws governing excise taxation.

By adding
Montgomery County Code
Chapter 52, Taxation
Article XIII, Excise Tax on Major Emitters of Carbon Dioxide
Sections 52-95 through 52-99

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 52 is amended by adding Article XIII, Excise Tax on Major Emitters of Carbon Dioxide:

Article XIII. Excise Tax on Major Emitters of Carbon Dioxide.

52-95. Findings.

The County Council finds that:

(a) In December, 2009 the US Environmental Protection Agency found that greenhouse gases in the atmosphere endanger both the public health and the environment for current and future generations.

(b) Montgomery County has embraced an 80 % reduction in greenhouse gas emissions by 2050 and has begun to engage in programmatic efforts to reduce these emissions. These efforts constitute a significant investment by the County and its constituents and cover both stationary sources (County owned and otherwise) and mobile sources.

(c) It is appropriate that the largest emitters of carbon dioxide in the County contribute to paying for these greenhouse gas reduction programs.

52-96. Tax levied; rates.

(a) Any major emitter of carbon dioxide, as defined in subsection (b), must file a tax return and pay an excise tax each year on the privilege of emitting carbon dioxide into the County airshed.

(b) A major emitter of carbon dioxide is any person who owns or operates any stationary source of carbon dioxide located in the County that emits more than 1 million tons of carbon dioxide in any calendar year.

(c) The rate of the tax established under subsection (a) is $5 per ton of carbon dioxide emitted.

(d) The County Council by resolution, after a public hearing advertised under Section 52-17(c), may increase or decrease the rate set in subsection (c).

(e) As used in this Article:

(1) *Ton*, when applies to carbon dioxide in gaseous form, means the amount of gas in cubic feet which is the equivalent of 2000 pounds on a molecular weight basis.

(2) *Director* means the Director of Finance.

(3) *Person* includes any individual, business, corporation, association, firm, partnership, group of individuals acting as a unit, trustee, receiver, assignee, or personal representative.

(f) By regulations issued under method (2) that are consistent with this Article, the County Executive may further specify the administration of this tax.

52-97. Due date.

(a) The tax levied under Section 52-96 is due and payable for each month on the last day of the next month.

(b) The Director may establish an alternative payment system. If an alternative payment system is established, the Director must require a pro-rated payment for any taxable period that ends before the system takes effect.

52-98. Collection; interest and penalties; violation; lien.

(a) If any person does not pay the Director the tax due under Section 52-96, that person is liable for:

(1) interest on/the unpaid tax at the rate of one percent per month for each month or part of a month after the tax is due; and

(2) a penalty of 5 percent of the amount of the tax per month or part of a month after the tax is due, not to exceed 25 percent of the tax.

The Director must collect any interest and penalty as part of the tax.

(b) If any person does not pay the tax when due, the Director must obtain information on which to calculate the tax due. As soon as the Director obtains sufficient information on which to calculate any tax due, the Director must assess the tax and penalties against the person. The Director must notify the person of the total amount of the tax, interest, and penalties by mail sent to the person's last known address. This notice is prima facie evidence of the tax due; entitles the County to judgment for the amount of the tax, penalty, and interest listed in the notice; and gives the taxpayer the burden of proving that the tax has been paid or any other sufficient defense to the action. The total amount due must be paid within 10 days after the date of the notice.

(c) Every person liable for any tax under Section 52-96 must preserve for 3 years suitable records necessary to determine the amount of the tax. The Director may inspect and audit the records at any reasonable time.

(d) Any failure to pay the tax when due under Section 52-97, and any violation of Section 52-97 or this Section, is a Class A violation. Each violation is a separate offense. A conviction under this subsection does not relieve any person from paying the tax.

(e) Section 52-18D applies to this tax.

52-99 . Allocation of Revenue.

Of the revenue from the tax levied under Section 52-96, 50% must be reserved for and allocated in the annual operating budget to funding for County greenhouse gas reduction programs, including mass transit.

Sec. 2. Expedited Effective Date.

The Council declares that this Act is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

Approved:

Nancy Floreen, President, County Council	Date

Approved:

Isiah Leggett, County Executive	Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council	Date

Montgomery County Group

April 21, 2010

Contact: David Hauck
Chair
Sierra Club, Montgomery County Group
(301)-270-5826
Hauck_d@msn.com

The Montgomery County Sierra Club strongly supports Councilmember Berliner's bill that would impose a fee on major emitters of carbon dioxide within the county. Carbon dioxide emissions are the primary cause of global climate change and steps must be taken now to reduce this carbon pollution. For too long there have been no costs associated with releasing greenhouse gases into the atmosphere. For too long major producers and users of fossil fuels have said we can't afford to put a price on carbon emissions. The truth is that the costs of global climate change far outweigh the costs of reducing greenhouse gas emissions.

This bill recognizes that truth and includes two key provisions:

- it places a specific price on carbon dioxide--$5.00 a ton—that lets large emitters know exactly how much their contribution to global climate change will cost them in the future, as well as how much reducing their carbon emissions can save them.

- it dedicates half of the money raised by the fee to the county's greenhouse gas reduction programs which help homeowners, renters and businesses save energy, reduce their carbon emissions and lower their utility bills.

The Montgomery County Sierra Club recognizes the hard work and creative thought Councilmember Berliner has demonstrated in finding ways for Montgomery County to have an impact on reducing greenhouse gas emissions. This bill is the next step in that effort and we look forward to its being enacted.

Statement from the Chesapeake Climate Action Network:

Montgomery County “Carbon Tax” on Big Polluters is a Key Step Toward Protecting Kids and Our Climate

Earth Day, April 22, 2010

From CCAN Director Mike Tidwell:

“On Earth Day 2010, I salute Councilmember Roger Berliner for proposing one of America’s first county-based carbon taxes on major polluters. The County Council should pass this bill as soon as possible. This much-needed legislation will apply to only one company: The Mirant Corporation, owner of the massive, coal-fired power plant in Dickerson, Maryland. The Dickerson plant is by far the largest carbon polluter in the county, and Mirant is one of the largest carbon polluters in America. Unfortunately the company has a long history of contaminating our air and our watersheds in Maryland without voluntarily acting to protect the public from its pollution. In 2006 alone, Mirant’s Chalk Point plant in Prince George’s County, Maryland, recorded 1400 violations of the Federal Clean Air Act for burning dirty “bunker oil” without a permit. Mirant fought tenaciously against Maryland’s landmark Healthy Air Act passed by the General Assembly in 2007. And just last month, the Maryland Department of the Environment filed a lawsuit alleging Mirant violated federal Clean Water Act regulations at its coal waste landfill in Prince George’s County. And in 2006, CCAN raised serious concerns about the Dickerson plant’s continual violation of the state’s nitrous oxide standard during summer months.

“The Montgomery County carbon tax is a wise and much-needed response to Mirant’s long-established pattern of serious pollution. The bill would not discernibly affect ratepayers. It would, however, generate much-needed funding for county-sponsored greenhouse gas reduction efforts. Until Congress finally acts to generate a nation cap on carbon pollution, every county in Maryland and every county in the country should follow Roger Berliner’s lead today.”

Statement of DR. MATTHIAS RUTH

Roy F. Weston Chair in Natural Economics
Director, Center for Integrative Environmental Research,
Division of Research
Director and Professor, Environmental Policy Program,
School of Public Policy
Co-Director, Engineering and Public Policy Program,
A. James Clark School of Engineering and School of Public Policy
University of Maryland

The State of Maryland and Montgomery County have begun to establish themselves as leaders in the Nation in dealing with the global challenge of climate change. Maryland has signed on to the Regional Greenhouse Gas Initiative (RGGI) - a cap and trade system in which the state sets upper limits on greenhouse gas emissions and auctions off permits to utilities. Through the auction process, a price for carbon and other greenhouse gases gets established, incentives are provided to utilities to reduce the costs of purchasing permits, and revenues are generated to the state. In essence, the state sets emissions targets, and the market determines the price of emissions. Recent experiences with cap and trade in the state suggest that the emissions targets are not particularly ambitious. As a result low prices for carbon and comparatively low state revenues result.

With the introduction of the carbon dioxide tax proposed in Councilmember Berliner's bill, the county recognizes that there is considerable room to improve on RGGI. The tax will live up to our expectations to really be environmental leaders by doing what is needed to cut greenhouse gas emissions. In doing so, the county will provide the right incentives to cut emissions, generate revenue to foster efficiency improvements, and break out of the ideological logjam that has, to date, prevented taxes from being used as means to guide action: RGGI has been an important step in promoting smaller carbon footprints, but the cumbersome constraints put on it actually do not lead the market to reign freely. The tax proposed here, instead, helps set the price of carbon dioxide directly at a more meaningful level, and then lets the market sort out optimal emission quantities. Introducing this tax is a clever way of leveraging the innovative capacity of power generators, and stimulating markets for clean technology and efficiency improvements.

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

OFFICE OF COUNCILMEMBER
ROGER BERLINER

April 14, 2010

Mr. Thomas Graham
President
Pepco Region
701 Ninth Street, NW
Washington, DC

Dear Tom:

I want to express my appreciation to you and your senior staff for taking the time to review my proposed legislation that would impose a $5 per ton carbon tax on the County's major emitters of greenhouse gas emissions.

In particular, your staff's expertise with respect to the operation of the Mirant power plant at Dickerson, a plant that had been owned and operated by PEPCO, and the potential impact of this legislation on Montgomery County ratepayers was extremely valuable. As you appreciate, that power plant all by itself contributes approximately 25% of the County's total greenhouse gas emissions, and almost 40% of the emissions from all stationary sources within the County.

One of the first questions I am asked about this legislation is the potential impact on ratepayers. Your staff's bottom line conclusion that the bill will have "***no discernable***" impact on ratepayers is a major consideration.

As we discussed, this conclusion was based on the fact that PEPCO buys its long-term power for its residential customers at auction, and at auction, PEPCO buys the least expensive power. Accordingly, your staff has concluded that if Mirant's power is priced competitively with other base load power from plants that do not pay a carbon tax, you will buy it. If Mirant's power is not competitively priced, you will not.

To the extent that PEPCO buys power on the spot market, and to the extent to which the Mirant power plant sells power on the spot market, Mirant's power would never affect the price of spot market supplies in the PJM power pool except on those occasions when the plant is literally the "marginal cost" supplier. As your staff explained, this would be a most

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"uncommon" situation, perhaps happening for a few hours, given that natural gas and other more expensive supplies typically establish the marginal, peak price.

While there are many public policy reasons why a carbon tax on the County's major emitters is sound public policy, PEPCO's conclusion that the legislation will not have any discernable impact on ratepayers is itself a significant plus. Your analysis in this regard is quite similar to the analysis of Dr. Mathias Ruth at the University of Maryland, a recognized state expert and authority, who also has stated that any impact would be "quite minimal."

I understand that you will be testifying on this legislation after it is introduced, and I look forward to you assuring my colleagues and our community that should we decide to adopt this revenue raising legislation, we can do so confident that our County ratepayers will not experience any "discernable" effects – other than the positive effect of having $15 million more dollars to deal with our budget crisis.

Sincerely,

Roger Berliner
Councilmember
District 1

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Mirant Dickerson Plant Carbon Dioxide Emissions (CO2)

Source: United States Environmental Protection Agency, Egrid 2007 (2004 plant data)

Mirant Plant Emissions in Comparison to the Montgomery County Community		
Mirant 2004 Emissions	3.47	Million Tons CO2
Montgomery County Community Emissions (FY2005)	13.85	Million Tons CO2 (Equivalent)
Total Stationary (Buildings)	8.90	Million Tons CO2 (Equivalent)
Total Mobile	4.77	Million Tons CO2 (Equivalent)
Other	0.18	Million Tons CO2 (Equivalent)

Approximate Percentage of Community Emissions Mirant is Equivalent To (2004/2005)		
Mirant 2004 Emissions	25%	Million Tons CO2